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**ORIGINAL
FILE**

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January 4, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

RE: MM Docket No. 92-259

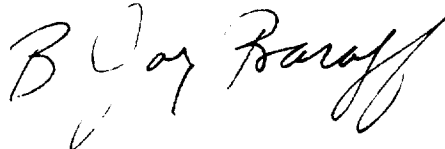
Dear Ms. Searcy:

On behalf of Southwest Missouri Cable TV, Inc., we hand you herewith an original and nine copies of its "Comments of Southwest Missouri Cable TV, Inc." in the above-referenced matter concerning broadcast signal carriage issues under the 1992 Cable Act.

Sufficient copies are being provided to you to insure distribution to each Commissioner's office.

Should any questions arise relative to this matter, kindly communicate with this office.


Sincerely yours,



B. Jay Baraff
Counsel for
Southwest Missouri Cable TV, Inc.

BJB/mcl
Enclosures
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JAN 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992) MM Docket No. 92-259

Broadcast Signal Carriage Issues

COMMENTS OF SOUTHWEST MISSOURI CABLE TV, INC.

Southwest Missouri Cable TV, Inc. ("Southwest"), by its attorneys, respectfully submits its comments in MM Docket No. 92-259, the broadcast signal carriage issues of the Implementation of the Cable Television Consumer Protection and Competition Act of 1992.¹ As specifically requested by the FCC, Southwest's comments will be focused on limited aspects of the proposed rules and will not re-argue either the need for the rules in general nor their constitutionality.² Accordingly, Southwest will limit its comments to problems created where a cable system lies between two television cities of license but is not within the ADI of both markets.

¹. Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 102 Stat. (1992) ("1992 Cable Act").

². By these comments, however, Southwest does not waive its rights to object to either the permissibility or the constitutionality of the 1992 Cable Act. Southwest further retains its rights to expand its comments as part of its reply comments.

I. INTRODUCTION

Southwest is a small, independent and rural cable television operator. Its operations typically provide the type of consumer friendly cable service that the 1992 Cable Act seeks to foster. In all of Southwest's systems, until January 1, 1993, it had not had a basic rate increase in six years. In all of Southwest's systems it has always tried to select programming for delivery to its subscribers that is responsive to subscribers' desires. In fact, in most instances customer surveys are used before any programming decisions are implemented.

However, two aspects of the proposed Must Carry rules will, unless altered, have a severe impact on Southwest's continuing ability to provide good service to its subscribers. These aspects exist where: (i) The cable system is not located in the ADI of one network station that is entitled to both network non-duplication and syndicated exclusivity against a station that is a potential Must Carry station because the system is located in the ADI of a non-priority stations; and (ii) The closest network station may be carried pursuant to a retransmission consent agreement (either because the closest station chose not to assert its Must Carry rights or because the system is not within the ADI of the closest network station) and a duplicating, but more distant, network station has requested Must Carry status.

II. NON-ADI STATION WITH NON-DUPLICATION RIGHTS

At the present time, the Commission's network non-duplication and syndicated exclusivity ("non-dup and syndex") rules will permit a non-ADI television station to obtain the right to require the deletion of programming on an ADI station³. Unless the present non-dup and syndex rules are modified, Section 614(b)(3)(B) of the 1992 Cable Act would require the carriage of a Must Carry station even though substantial portions of its broadcast day are required to be deleted under sub-part F of part 76 of the Commission's rules.⁴ While the Commission, in the above-referenced Notice of Proposed Rule Making, recognized that this inequitable result could arise, Southwest would like the Commission to be aware that this situation does in fact exist and that this anomaly has caused a great deal of subscriber dissatisfaction. Further, this anomaly may result in a situation where the priority station for non-dup and syndex purposes, is not carried because the cost to carry it under Retransmission Consent is too costly but the station that is carried has substantial and highly attractive portions of its broadcast day deleted. At a

³. For purposes of simplicity, when a system is located within the ADI of a station, that station will be referred to as an ADI station; where the system is not located within the ADI of a station, that station will be referred to as a non-ADI station.

⁴. Southwest is taking no position, at this time, on the effect of section 76.67 of the Commission's rules, the so-called "sports blackout" rule.

minimum, this situation places the cable operator in a very unfavorable and unfair bargaining position with respect to the non-ADI priority station's efforts to sell its retransmission rights.

Southwest's system in Monett, Missouri, is, based on 1992 ADI data, located within the Springfield, Missouri, ADI but not within the Joplin, Missouri, ADI. Southwest's principal headend for the Monett system, however, is located only 34.5 miles from Joplin⁵ but over 41 miles from Springfield. Pursuant to Section 614 of the 1992 Cable Act, the following Springfield, Missouri, stations would be entitled to assert carriage rights:

KYTV, Channel 3, NBC
KOLR, Channel 10, CBS
KDEB-TV, Channel 27, Fox
KSPR, Channel 33, ABC

None of the Joplin stations are entitled to assert carriage rights because the Joplin stations are non-ADI stations. However, because the Springfield ABC affiliate, KSPR, is not significantly viewed in Monett, the Joplin ABC affiliate, KODE, is entitled to both non-dup and syndex protection against KSPR.

Cable subscribers in Monett, and for that matter those in a large number of other markets where this anomaly occurs, cannot possibly be well-served by this situation. If Southwest honors KSPR's request for carriage, it will

⁵. Joplin is a smaller television market under the Commission's present market definition rules.

have to acquire switching equipment that is both expensive to acquire and maintain. These are expenses that would have to be passed on to its subscribers in Monett. The subscribers would also be faced with a situation where their one logical source of ABC programming on the cable system does not carry any ABC programming because of KODE's non-dup rights. This problem would be further exacerbated should KODE refuse to grant Southwest Retransmission Consent or demand carriage fees so prohibitive as to prevent Southwest from carrying it because of cost.

The Commission could remedy this situation by either not requiring a system to carry any ADI station that requests carriage if that ADI station is subject to non-dup or syndex, or by creating an exception to the non-dup and syndex rules so that there would be no requirement to black-out a station entitled to carriage rights.⁶

Either remedy would be consistent with Section 614 of the 1992 Cable Act. The provisions of Section 614 (b) (3) (B) that relate to carriage of Must Carry signals subject to non-dup and syndex is written in the context of an exception to the prohibition against deletion or alteration of a Must

⁶. The waiver process whereby the Joplin station would be declared an ADI station does not give sufficient protection to the subscribers. Conceivably a system could be required to carry a station subject to blackouts, while the waiver process was going forward and then be able to drop one or more stations once the waiver process was completed. However, perhaps the greatest causes for subscriber dissatisfaction are the removal of signals and the blacking out of programming. Therefore, this process is sure to greatly increase subscriber displeasure.

Carry signal. That is, if the Commissions rules pursuant to "subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991) or any successor regulations thereto" that deletion is required, the system need not carry the signal in its entirety. However, if the Commission were to amend Subpart F and exempt Must Carry signals from the deletion requirements, the exception to the requirement to carry the entire signal would simply not apply. Therefore, the operator would again be required to carry the entire signal. The Commission could also determine that a station entitled to carriage rights that is subject to deletion of significant portions of its broadcast day is not an available signal pursuant to Section 614(b)(10)(A) of the 1992 Cable Act.

III. CLOSEST NETWORK STATION IS A NON-ADI STATION.

Section 614 (b) (5) provides that a cable operator is not required to carry the signal of more than one local commercial broadcast station affiliated with a particular network. The one exception to this latitude granted to the cable operator is the requirement, pursuant to Section 614 (b) (2) (B), that the cable operator shall carry the affiliate of a broadcast network whose city of license is closest to the principal headend of the cable system. The express language of Section 614 (b) (5) makes it unclear whether the carriage of a non-ADI network affiliate that is closer than an ADI affiliate would permit the operator not

to carry the more distant ADI affiliate because its carriage is duplicative. Southwest believes that this oversight occurred because the Congress was not aware of the many anomalous situations such as that arising at Southwest's Monett system. However, the intent of Sections (b)(5) and (b)(2)(B) is to recognize the public benefit of carrying the closest network affiliate while not requiring unnecessary duplication.

As mentioned above, the Monett system is within the Springfield ADI but is significantly closer to Joplin. The subscribers to the Monett system have expressed a very strong preference for receipt of some of the Joplin commercial stations in addition to the Springfield affiliates. Thus, in light of its unique market circumstances, Southwest should be free to select, based on its subscribers' current and future preferences, from among the Springfield and Joplin network affiliated stations, and should be free to make its decision without concern that one station may be able to "force its hand" because of any non-duplication rights it may possess. In effect, an "automatic waiver" of the non-duplication rules should apply in circumstances such as face Southwest where the must carry and program protection rules are obviously inconsistent.

Clearly the underlying purpose of the 1992 Cable Act is to protect the interests and desires of cable subscribers. Unless the Commission's rules allow Southwest to carry the

closest network affiliate, even though it is from a non-ADI market, in lieu of the more distant ADI network affiliate, the very purposes of the 1992 Cable Act would be frustrated. Accordingly, Southwest requests that the Commission adopt rules that will allow a cable system facing the unique situation under which Southwest operates to choose whether (1) to carry a closer non-ADI network station; (2) to carry the more distant ADI affiliate; or (3) to carry both stations, and to do so in each case without being subject to the network non-duplication rules.

IV. CONCLUSION

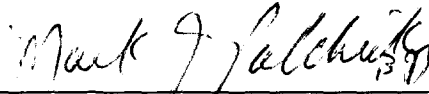
Two very serious anomalies exist where the non-ADI market is closer than the ADI market. Systems caught between these markets could be required to carry the signal of a station from which a significant portion of its signal must be deleted pursuant to the Commission's non-dup and syndex rules, or systems could be required to carry the signal of a more distant network affiliate over a closer network affiliate. Both of these situations are strongly consumer unfriendly and therefore inconsistent with a fundamental basis of the 1992 Cable Act. Therefore, Southwest requests that the Commission adopt rules that will permit the carriage of the closer affiliate, even though the system is not in that station's ADI, or will allow the operator to choose to carry the more distant ADI station without being subject to non-duplication requirements.

Similarly, if the system opts to carry both the ADI and non-ADI affiliates, it may do so, but again without program protection obligations.

Respectfully submitted,

SOUTHWEST MISSOURI CABLE TV, INC

BY ITS ATTORNEYS
BARAFF, KOERNER, OLENDER
& HOCHBERG, P.C.

A handwritten signature in cursive script, reading "Mark J. Palchick". The signature is written in dark ink and is positioned above a horizontal line.

MARK J. PALCHICK

January 4, 1993